Council of the European Union

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2011/0059 (CNS)

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NOTE

From:	Presidency
To:	Council
No. prev. doc.:	14124/15
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Subject:	Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes - Political agreement

1. The Council (Justice and Home Affairs) decided, at its session of 4 and 5 December 2014, to re-examine the possible compromise text on the abovementioned proposal as soon as possible and not later than by the end of 2015, in order to assess whether the required unanimity can be achieved.

2. Following this, the Presidency held bilateral contacts with all delegations and convened a JHA Counsellors meeting on 3 November 2015 where it presented a number of amendments with a view to reaching a compromise on this file.

3. In the light of the outcome of the discussions with the Member States, the Presidency submitted a revised text of the abovementioned proposal to COREPER on 25 November 2015.

4. The Presidency took note of the positions expressed by the Member States during the abovementioned COREPER meeting[1] and decided to submit the compromise text, as set out in the Annex below, to the Council (Justice and Home Affairs) on 3 and 4 December 2015, with a view to the adoption of a political agreement.[2]

5. In comparison to the Commission proposal all deletions are marked by (…) and new inserted text is **in bold.**

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[1] See documents 14660/15, 14658/15 and 14664/15.

[2] Article 36(3) of the text was amended in order to also include the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden in the "Nordic exception" set out in that Article. Recitals 25 and 32 have been aligned with the text of Article 27a.

ANNEX

2011/0059 (CNS)

Proposal for a

COUNCIL REGULATION

on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament[3],

Having regard to the opinion of the European Economic and Social Committee[4],

Acting in accordance with a special legislative procedure,

Whereas:

(…)

3 OJ C […], […], p. […].
4 OJ C […], […], p. […].

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union **is to** adopt measures relating to judicial cooperation in civil matters having cross-border implications, **particularly when necessary for the proper functioning of the internal market.**

(1a) In accordance with point c) of Article 81(2) of the Treaty on the Functioning of the European Union, such measures may include measures aimed at ensuring the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction.

(2) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement that principle.

(3) **A programme of** measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters[5], **common to the Commission and to the Council, was adopted on 30 November 2000. That** programme identifies measures relating to the harmonisation of conflict-of-laws rules **as measures facilitating** the mutual recognition of **decisions and** provides for the **drawing-up of an** instrument in matters of matrimonial property regimes (…).

[5] OJ C 12, 15.1.2001, p. 1.

(4) The European Council meeting in Brussels on 4 and 5 November 2004 adopted a new programme **called** 'The Hague Programme: strengthening freedom, security and justice in the European Union'[6]. In this programme the Council asked the Commission to present a Green Paper on conflicts of law in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition. The programme also stressed the need to adopt an instrument in this area(…).

(5) On 17 July 2006 the Commission adopted the Green Paper on the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition[7]. This Green Paper launched wide consultations on all aspects of the difficulties faced by couples in Europe when it comes to the liquidation of their common property and the legal remedies available.

(6) **At its meeting in Brussels on 10 and 11 December 2009 the European Council adopted a new multiannual programme called 'the Stockholm Programme – An open and secure Europe serving and protecting citizens'**[8]**. In that** programme **the European Council considered** that mutual recognition should be extended to **fields that are not yet covered but are essential to everyday life, for example** matrimonial property **rights, while taking into consideration Member States' legal systems, including public policy (*ordre public*), and national traditions in this area.**

(7) In the 'EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights', adopted on 27 October 2010[9], the Commission announced it would adopt a proposal for legislation to eliminate the obstacles to the free movement of persons, in particular the difficulties experienced by couples in managing or dividing their property.

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6 OJ L 53, 3.3.2005, p. 1.
7 COM(2006) 400.
8 OJ L 115, 4.5.2010, p. 1.
9 COM(2010) 603.

(8) **In accordance with Article 81 of the Treaty on the Functioning of the European Union, this Regulation should apply in the context of matrimonial property regimes having cross-border implications.**

(8a) To provide married couples with legal certainty as to their property and offer them a degree of predictability, all the rules applicable to matrimonial property regimes should be covered in a single instrument.

(9) In order to achieve **those** objectives, this Regulation **should** bring together (…) provisions on (…) jurisdiction, applicable law, recognition **or, as the case may be, acceptance, enforceability** and enforcement of decisions, authentic instruments **and court settlements** (…).

(10) This Regulation does not define 'marriage', which is defined by the national laws of the Member States.

(11) The scope of this Regulation should **include** all civil**-law aspects of** matrimonial property regimes, both the daily management of matrimonial property and the liquidation of the regime, in particular as a result of the couple's separation or the death of one of the spouses**. For the purposes of this Regulation, the term 'matrimonial property regime' should be interpreted autonomously and should encompass not only rules from which the spouses may not derogate but also any optional rules to which the spouses may agree in accordance with the applicable law, as well as any default rules of the applicable law. It includes not only property arrangements specifically and exclusively envisaged by certain national legal systems in the case of marriage but also any property relationships, between the spouses and in their relations with third parties, resulting directly from the matrimonial relationship, or the dissolution thereof.**

(11a) For reasons of clarity, a number of questions which could be seen as having a link with matters of matrimonial property regime should be explicitly excluded from the scope of this Regulation.

(11b) Accordingly, this Regulation should not apply to questions of general legal capacity of the spouses; however, this exclusion should not cover the specific powers and rights of either or both spouses with regard to property, either as between themselves or as regards third parties, as these powers and rights should fall under the scope of the Regulation.

(11c) It should not apply to other preliminary questions such as the existence, validity or recognition of a marriage, which continue to be covered by the national law of the Member States, including their rules of private international law.

(12) As maintenance obligations between spouses are governed by Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations[10], they should be excluded from the scope of this Regulation **(…), as should issues relating to the succession to the estate of a deceased spouse, that are covered by Regulation (EU) No 650/2012 of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession**[11].

(12a) Issues of entitlements to transfer or adjustement between spouses of rights to retirement or disability pension, whatever their nature, accrued during marriage and which have not generated pension income during the marriage are matters that should remain excluded from the scope of this Regulation, taking into account the specific systems existing in the Member States. However, such exception should remain of strict interpretation. Hence, this Regulation should govern in particular the issue of classification of pension assets, the amounts that have already been paid to one spouse during the marriage, and the possible compensation that would be granted in case of pension subscribed with common assets.

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10 OJ L 7, 10.1.2009, p. 1.
11 OJ L 201, 27.7.2012, p. 107.

(13) (…)

This Regulation should allow for the creation or the transfer resulting from the matrimonial property regime of a right in immovable or movable property as provided for in the law applicable to the matrimonial property regime. It should, however, not affect the limited number (‘*numerus clausus* ’) of rights *in rem* known in the national law of some Member States. A Member State should not be required to recognise a right *in rem* relating to property located in that Member State if the right *in rem* in question is not known in its law.

(13a) However, in order to allow the spouses to enjoy in another Member State the rights which have been created or transferred to them as a result of the matrimonial property regime, this Regulation should provide for the adaptation of an unknown right *in rem* to the closest equivalent right under the law of that other Member State. In the context of such an adaptation, account should be taken of the aims and the interests pursued by the specific right *in rem* and the effects attached to it. For the purposes of determining the closest equivalent national right, the authorities or competent persons of the State whose law applied to the matrimonial property regime may be contacted for further information on the nature and the effects of the right. To that end, the existing networks in the area of judicial cooperation in civil and commercial matters could be used, as well as any other available means facilitating the understanding of foreign law.

(13b) The adaptation of unknown rights *in rem* as explicitly provided for by this Regulation should not preclude other forms of adaptation in the context of the application of this Regulation.

(13c) The requirements for the recording in a register of a right in immovable or movable property should be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept (for immovable property, the *lex rei sitae*) which determines under what legal conditions and how the recording must be carried out and which authorities, such as land registers or notaries, are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information. In particular, the authorities may check that the right of a spouse to a property mentioned in the document presented for registration is a right which is recorded as such in the register or which is otherwise demonstrated in accordance with the law of the Member State in which the register is kept. In order to avoid duplication of documents, the registration authorities should accept such documents drawn up in another Member State by the competent authorities whose circulation is provided by this Regulation. This should not preclude the authorities involved in the registration from asking the person applying for registration to provide such additional information, or to present such additional documents, as are required under the law of the Member State in which the register is kept, for instance information or documents relating to the payment of revenue. The competent authority may indicate to the person applying for registration how the missing information or documents can be provided.

(13d) The effects of the recording of a right in a register should also be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept which determines whether the recording is, for instance, declaratory or constitutive in effect. Thus, where, for example, the acquisition of a right in immovable property requires a recording in a register under the law of the Member State in which the register is kept in order to ensure the *erga omnes* effect of registers or to protect legal transactions, the moment of such acquisition should be governed by the law of that Member State.

(13e) This Regulation should respect the different systems for dealing with matters of the matrimonial property regime applied in the Member States. For the purposes of this Regulation, the term 'court' should therefore be given a broad meaning so as to cover not only courts in the true sense of the word, exercising judicial functions, but also for example notaries in some Member States who or which, in certain matters of matrimonial property regime, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in a given matrimonial property regime by delegation of power by a court. All courts as defined in this Regulation should be bound by the rules of jurisdiction set out in this Regulation. Conversely, the term 'court' should not cover non-judicial authorities of a Member State empowered under national law to deal with matters of matrimonial property regime, such as the notaries in most Member States where, as is usually the case, they are not exercising judicial functions.

(13f) This Regulation should allow all notaries who have competence in matters of matrimonial property regime in the Member States to exercise such competence. Whether or not the notaries in a given Member State are bound by the rules of jurisdiction set out in this Regulation should depend on whether or not they are covered by the term 'court' for the purposes of this Regulation.

(13g) Acts issued by notaries in matters of matrimonial property regime in the Member States should circulate under this Regulation. When notaries exercise judicial functions they are bound by the rules of jurisdiction, and the decisions they give should circulate in accordance with the provisions on recognition, enforceability and enforcement of decisions. When notaries do not exercise judicial functions they are not bound by the rules of jurisdiction, and the authentic instruments they issue should circulate in accordance with the provisions on authentic instruments.

(14) To reflect the increasing mobility of couples during their married life and facilitate the proper administration of justice, the rules on (…)jurisdiction in this Regulation **should enable citizens to have the various related procedures handled by the courts of the same Member State. To that end, the Regulation should seek to concentrate the jurisdiction on matrimonial property regime in the Member State whose courts are called upon to handle the succession of a spouse or the divorce, legal separation or marriage annulment in accordance with respectively Regulation (EU) No 650/2012 or Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000**[12].

(14a) The Regulation should provide that where proceedings on the succession of a spouse are pending before the court of a Member State seized under the Regulation (EU) No 650/2012, the courts of that State should have jurisdiction to rule on matters of matrimonial property regimes linked to that succession case.

(14b) Similarly matters of matrimonial property regimes **arising in connection with proceedings pending before the court of a Member State seised for divorce, legal separation or marriage annulment under Regulation (EC) No 2201/2003 should** be dealt with by the courts **of that** Member State **unless the jurisdiction to rule on the divorce, legal separation or marriage annulement may only be based on specific grounds of jurisdiction. In such cases, the concentration of jurisdiction should not be allowed without the spouses' agreement**.

[12] **OJ L 338, 23.12.2003, p. 1.**

(15) (…)(…)

(16) Where matters of matrimonial property regimes are not linked to **proceedings pending before the court of a Member State on the succession of a spouse or on** divorce, separation or marriage annulment, **this Regulation should provide for a scale of connecting factors for the purposes of determining jurisdiction starting with the habitual residence of the spouses at the time the court is seised**. **These factors are set in view of the increasing mobility of citizens and in order to ensure that a genuine connecting factor exists between the spouses and the Member State in which jurisdiction is exercised.**

(16a) In order to increase legal certainty, predictability and the autonomy of the parties, this regulation should enable, under certain circumstances, the parties to conclude a choice of court agreement in favour of the courts of the Member State of the applicable law or of the courts of the Member State of the celebration of the marriage.

(16aa) For the purposes of the application of this Regulation and in order to cover all possible situations, the Member State of the celebration of the marriage should be the Member State before whose authorities the marriage is celebrated.[13]

[13] The term 'celebrated' shall be translated in German by 'geschlossen'.

(16a1) The courts of a Member State may hold that under their private international law the marriage in question cannot be recognised for the purposes of matrimonial property regime proceedings. In such a case, it may exceptionally be necessary to decline jurisdiction under this Regulation. The courts shall act swiftly and the party concerned should have the possibility to submit the case in any other Member State that has a connecting factor granting jurisdiction, irrespective of the order of these jurisdiction grounds, while at the same time respecting the parties' autonomy. Any court seised after a declining of jurisdiction, other than the courts of the Member State of the celebration of the marriage, may also exceptionally need to decline jurisdiction under the same conditions. The combination of the various jurisdiction rules should, however, ensure that parties have all possibilities to seise the courts of a Member State which will accept jurisdiction for the purposes of giving effect to their matrimonial property regime.

(16b) This Regulation should not prevent the parties from settling the matrimonial property regime case amicably out of court, for instance before a notary, in a Member State of their choice where this is possible under the law of that Member State. This should be the case even if the law applicable to the matrimonial property regime is not the law of that Member State.

(17) **In order to ensure that the courts of all Member States may, on the same grounds, exercise jurisdiction in relation to the matrimonial property regimes of spouses, this Regulation should provide exhaustively the ground on which such subsidiary jurisdiction may be exercised.**

(18) **In order to remedy, in particular, situations of denial of justice, this Regulation should provide a *forum necessitatis* allowing a court of a Member State, on an exceptional basis, to rule on a matrimonial property regime which is closely connected with a third State. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third State in question, for example because of civil war, or when a spouse cannot reasonably be expected to initiate or conduct proceedings in that State. Jurisdiction based on *forum necessitatis* should, however, be exercised only if the case has a sufficient connection with the Member State of the court seised.**

(18a) In the interests of the harmonious functioning of justice, the giving of irreconcilable decisions in different Member States should be avoided. To that end, this Regulation should provide for general procedural rules similar to those of other Union instruments in the area of judicial cooperation in civil matters.

One such procedural rule is a *lis pendens* rule which will come into play if the same matrimonial property regime case is brought before different courts in different Member States. That rule will then determine which court should proceed to deal with the matrimonial property regime case.

(18b) In order to allow citizens to avail themselves, with all legal certainty, of the benefits offered by the internal market, the Regulation should enable spouses to know in advance which law will apply to their matrimonial property regime. Harmonised conflict-of-laws rules should therefore be introduced in order to avoid contradictory results. The main rule should ensure that the matrimonial property regime is governed by a predictable law with which it is closely connected. For reasons of legal certainty and in order to avoid the fragmentation of the matrimonial property regime, the law applicable to a matrimonial property regime should govern that regime as a whole, that is to say, all the property covered by that regime, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third State.

(18c) The law determined by this Regulation should apply even if it is not the law of a Member State.

(19) To facilitate spouses' management of their property, this Regulation **should** authorise them to choose the law applicable to (…) their matrimonial property regime, regardless of the nature or location of the property, among the laws with which they have close links because of **habitual** residence or their nationality. This choice may be made at any moment, **before the marriage,** at the time of celebration[14] of the marriage or during the course of the marriage.

To ensure the legal certainty of transactions and to prevent any change of the law applicable to the matrimonial property regime being made without the spouses being notified, no change of law applicable to the matrimonial property regime should be made except at the express desire of the parties. Such a change by the spouses should not have retrospective effect unless they expressly so stipulate. Whatever the case, it may not infringe the rights of third parties (…).

(20) (…)

(21) (…)

(22) (…)

(23) (…).

[14] The term 'celebration' shall be translated in German by 'Eheschließung'

(24) **Rules on material and formal validity of** the agreement on the choice of applicable law **should be defined so that the informed choice of the spouses is facilitated and that their consent is respected with a view to ensuring legal certainty as well as better access to justice. As far as formal validity is concerned, certain safeguards should be introduced to ensure that spouses are aware of the implications of their choice. The agreement on the choice of applicable law should at least be expressed in writing, dated and signed by both parties. However, if the law of the Member State in which the two spouses have their habitual residence at the time the agreement is concluded lays down additional formal rules, those rules should be complied with. If, at the time the agreement is concluded, the spouses are habitually resident in different Member States which lay down different formal rules, compliance with the formal rules of one of these States would suffice. If, at the time the agreement is concluded, only one of the spouses is habitually resident in a Member State which lays down additional formal rules, these rules should be complied with.**

(24a) A matrimonial property agreement is a type of disposition on matrimonial property the admissibility and acceptance of which vary among the Member States. In order to make it easier for matrimonial property rights acquired as a result of a matrimonial property agreement to be accepted in the Member States, rules on formal validity of matrimonial property agreements should be defined. At least the agreement should be expressed in writing, dated and signed by both parties. However, the agreement should also fulfil additional formal validity requirements set out in the law applicable to the matrimonial property regime as determined by the Regulation and in the law of the Member State in which the spouses have their habitual residence. This Regulation should also determine which law is to govern the material validity of such agreement.

(24b) Where no applicable law is chosen, and with a view to reconciling predictability and legal certainty with consideration of the life actually lived by the couple, this Regulation should introduce harmonised conflict-of-laws rules to establish the law applicable to all the spouses' property on the basis of a scale of connecting factors. The first common habitual residence of the spouses shortly after marriage should constitute the first criterion, ahead of the law of the spouses' common nationality at the time of their marriage. If neither of these criteria apply, or failing a first common habitual residence in cases where the spouses have dual common nationalities at the time of the celebration of the marriage, the third criterion should be the law of the State with which the spouses have the closest links, taking into account all the circumstances, it being made clear that these links are to be considered as they were at the time the marriage was entered into.

(24c) Where this Regulation refers to nationality as a connecting factor, the question of how to consider a person having multiple nationality is a preliminary question which falls outside the scope of this Regulation and should be left to national law, including, where applicable, international Conventions, in full observance of the general principles of the European Union. This consideration should have no effect on the validity of a choice of law which was made in accordance with this Regulation.

(24d) With regard to the determination of the law applicable to the matrimonial property regime in absence of a choice of law and a matrimonial property agreement, the judicial authority of a Member State, at the request of either of the spouses, should, in exceptional cases – where the spouses have moved to the State of their habitual residence for a long duration – be able to arrive at the conclusion that the law of that State may apply if the spouses have relied on it. Whatever the case, it may not infringe the rights of third parties.

(24e) The law determined as the law applicable to the matrimonial property regime should govern the matrimonial property regime from the classification of property of one or both spouses into different categories during the marriage and after its dissolution to the liquidation of the property. It should include the effects of the matrimonial property regime on a legal relationship between a spouse and third parties. However the law applicable to matrimonial property regime may be invoked against a third party by a spouse to govern such effects only when the legal relations between the spouse and the third party arose at a time where the third party knew or should have known of that law.

(24f) Considerations of public interest, such as the protection its political, social or economic organisation, should justify giving the courts and other competent authorities of the Member States the possibility, in exceptional cases, of applying exceptions based on overriding mandatory provisions. Accordingly, the concept of "overriding mandatory provisions" should cover rules of imperative nature such as rules for the protection of the family home. However this exception to the application of the law applicable to the matrimonial property regime requires a strict interpretation in order to remain compatible with the general objective of this Regulation.

(25) Considerations of public interest should also allow courts and other competent authorities dealing with matters of matrimonial property regime in the Member States to disregard, in exceptional circumstances, certain provisions of a foreign law where, in a given case, applying such provisions would be manifestly incompatible with the public policy (ordre public) of the Member State concerned. However, the courts or other competent authorities should not be able to apply the public-policy exception in order to set aside the law of another State or to refuse to recognise — or, as the case may be, accept —, or enforce a decision, an authentic instrument or a court settlement from another Member State when doing so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof on the principle of non-discrimination.

(26) **Since there are States in which two or more systems of law or sets of rules concerning matters governed by this Regulation coexist, there should be a provision governing the extent to which this Regulation applies in the different territorial units of those States.**

(26a) In the light of its general objective, which is the mutual recognition of decisions given in the Member States in matters of matrimonial property regime, this Regulation should lay down rules relating to the recognition, enforceability and enforcement of decisions similar to those of other Union instruments in the area of judicial cooperation in civil matters.

(26b) In order to take into account the different systems for dealing with matters of matrimonial property regimes in the Member States, this Regulation should guarantee the acceptance and enforceability in all Member States of authentic instruments in matters of matrimonial property regime.

(26c) Authentic instruments should have the same evidentiary effects in another Member State as they have in the Member State of origin, or the most comparable effects. When determining the evidentiary effects of a given authentic instrument in another Member State or the most comparable effects, reference should be made to the nature and the scope of the evidentiary effects of the authentic instrument in the Member State of origin. The evidentiary effects which a given authentic instrument should have in another Member State will therefore depend on the law of the Member State of origin.

(26d) The 'authenticity' of an authentic instrument should be an autonomous concept covering elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up. It should also cover the factual elements recorded in the authentic instrument by the authority concerned, such as the fact that the parties indicated appeared before that authority on the date indicated and that they made the declarations indicated. A party wishing to challenge the authenticity of an authentic instrument should do so before the competent court in the Member State of origin of the authentic instrument under the law of that Member State.

(26e) The term 'the legal acts or legal relationships recorded in an authentic instrument' should be interpreted as referring to the contents as to substance recorded in the authentic instrument. A party wishing to challenge the legal acts or legal relationships recorded in an authentic instrument should do so before the courts having jurisdiction under this Regulation, which should decide on the challenge in accordance with the law applicable to the matrimonial property regime.

(26f) If a question relating to the legal acts or legal relationships recorded in an authentic instrument is raised as an incidental question in proceedings before a court of a Member State, that court should have jurisdiction over that question.

(26g) An authentic instrument which is being challenged should not produce any evidentiary effects in a Member State other than the Member State of origin as long as the challenge is pending. If the challenge concerns only a specific matter relating to the legal acts or legal relationships recorded in the authentic instrument, the authentic instrument in question should not produce any evidentiary effects in a Member State other than the Member State of origin with regard to the matter being challenged as long as the challenge is pending. An authentic instrument which has been declared invalid as a result of a challenge should cease to produce any evidentiary effects.

(26h) Should an authority, in the application of this Regulation, be presented with two incompatible authentic instruments, it should assess the question as to which authentic instrument, if any, should be given priority, taking into account the circumstances of the particular case. Where it is not clear from those circumstances which authentic instrument, if any, should be given priority, the question should be determined by the courts having jurisdiction under this Regulation, or, where the question is raised as an incidental question in the course of proceedings, by the court seised of those proceedings. In the event of incompatibility between an authentic instrument and a decision, regard should be had to the grounds of non-recognition of decisions under this Regulation.

(27) (…)

(28) **The recognition and enforcement of a decision on matrimonial property regime under this Regulation should not in any way imply the recognition of the marriage underlying the matrimonial property regime which gave rise to the decision.**

(29) (…)

(30) **The relationship between** this Regulation **and the bilateral or multilateral** conventions **on matrimonial property regime** to which **the** Member States are party **should be specified.**

(30a) This Regulation should not preclude Member States which are parties to the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden containing international private law provisions on marriage, adoption and guardianship, as revised in 2007, and of the Convention of 11 October 1977 between Denmark, Finland, Iceland, Norway and Sweden on the recognition and enforcement of judgements in civil matters, from continuing applying certain provisions of these Conventions.

(30a) In order to facilitate the application of this Regulation, provision should be made for an obligation requiring the Member States to communicate certain information regarding their legislation and procedures relating to matrimonial property regimes within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC[15]. In order to allow for the timely publication in the *Official Journal of the European Union* of all information of relevance for the practical application of this Regulation, the Member States should also communicate such information to the Commission before this Regulation starts to apply.

(30b) Equally, to facilitate the application of this Regulation and to allow for the use of modern communication technologies, standard forms should be prescribed for the attestations to be provided in connection with the application for a declaration of enforceability of a decision, authentic instrument or court settlement.

(30c) In calculating the periods and time limits provided for in this regulation, Regulation (EEC, Euratom) n° 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits[16], should apply.

(30d) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the attestations and forms pertaining to the declaration of enforceability of decisions, court settlements and authentic instruments. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[17].

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15 OJ L 174, 27.6.2001, p. 25.
16 OJ L 124 8.6.1971, p. 1.
17 OJ L 55, 28.2.2011, p. 13.

(30e) The advisory procedure should be used for the adoption of implementing acts establishing and subsequently amending the attestations and forms provided for in this Regulation in accordance with the procedure laid down in Article 4 of Regulation (EU) No 182/2011.

(31) The objectives of this Regulation, namely the free movement of persons in the European Union, the opportunity for spouses to arrange their property relations in respect of themselves and others during their life as a couple and when liquidating their property, and greater predictability and legal certainty, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at European Union level; under the principle of subsidiarity enshrined in Article 5 of the Treaty on European Union, therefore, the Union has competence to act. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(32) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular Articles 7, 9, 17, 21 and 47 concerning, respectively, respect for private and family life, the right to marry and to found a family according to national laws, property rights, the (…) **principle of non-**discrimination and the right to an effective remedy and to a fair trial. **This Regulation must be applied by the** courts **and other competent authorities of the Member States** in **observance of those** rights and principles.

(33) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, **those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application. This is, however, without prejudice to the possibility for the United Kingdom and Ireland of notifying their intention of accepting this Regulation after its adoption in accordance with Article 4 of the said Protocol.**

(34) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, **Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application**,

HAS ADOPTED THIS REGULATION:

Chapter I

Scope and definitions

Article 1

Scope

1. This Regulation shall apply to matrimonial property regimes.

   It shall not apply (…) to revenue, customs or administrative matters**.**

2. (…).

3. The following (…) **shall be** excluded from the scope of this Regulation:

   (a) the legal capacity of spouses

   (a *a*) the existence, validity or recognition of a marriage,

   (b) maintenance obligations,

   (c) (…)

   (d) the succession **to the estate of a deceased spouse**,

   (e) (…),

   (e-*0*) social security

(e*a*) **the entitlement to transfer or adjustment between spouses in the case of divorce, legal separation or marriage annulment, of rights to retirement or disability pension accrued during marriage and which have not generated pension income during the marriage,**

(f) the nature of rights in rem relating to a property**,** and (…)

(f*a*) **any recording in a register of rights in immovable or movable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register.**

Article 1a

Competence in matters of matrimonial property regimes within the Member States

This Regulation shall not affect the competence of the authorities of the Member States to deal with matters of matrimonial property regimes.

Article 2

Definitions

1. For the purposes of this Regulation (…):

(a) 'matrimonial property regime' **means** a set of rules concerning the property relationships (…) between the spouses and in **their relations with** third parties**, as a result of marriage or its dissolution**;

(b) **'matrimonial property agreement' means** any agreement **between** (…) spouses or future spouses by which they organise their **matrimonial property** regime (…);

(c) 'authentic instrument' **means a document (…) in a matter of a matrimonial property regime** which has been **formally(…)** drawn up or registered as an authentic instrument in **a** (…) Member State (…) and the authenticity of which:

(i) relates to the signature and the content of the authentic instrument, and

(ii) has been established by a public authority or other authority empowered for that purpose **by the Member State of origin**;

(d) 'decision' **means** any decision (…) in a matter of a matrimonial property regime **given** by a court of a Member State, whatever the decision may be called, including (…) **a decision on** the determination of costs or expenses by an officer of the court;

(…)

(g)

(h) 'court settlement' **means** a settlement **in a matter of (…)** matrimonial property regime which has been approved by or concluded before a court in the course of proceedings;

(e) 'Member State of origin' **means** the Member State in which, as the case may be, the decision has been given, (…) the authentic instrument drawn up, the court settlement approved **or concluded (…)**;

(f) 'Member State **of enforcement' means** the Member State in which recognition and/or enforcement of the decision, (…) authentic instrument, court settlement (…)is requested.

(…)

3. **For the purposes of this Regulation, the term** 'court' **means** any (…) judicial authority **and all other authorities and legal professionals with competence in matters of matrimonial property regimes** (…) which **exercise** (…) judicial function**s** (…) **or act** by delegation **of power by a judicial authority or under its control, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard, and provided that their decisions under the law of the Member State in which they operate :**

   (i) may be made the subject of an appeal to or review by a judicial authority; and

   (ii) have a similar force and effect as a decision of a judicial authority on the same matter.

   The Member States shall notify the Commission of the other authorities and legal professionals referred to in the first subparagraph in accordance with Article 37aa.

Chapter II

Jurisdiction

Article 3

Jurisdiction in the event of the death of one of the spouses

Where a court of **a** (…) Member State **is** seised **in matters of** (…) the succession of a spouse under Regulation (**EU) No 650/2012**, **the courts of that State** shall (…) have jurisdiction to rule on matters of the matrimonial property regime arising in connection with **that succession case**.

Article 4

Jurisdiction in cases of divorce, legal separation or marriage annulment

1. **Without prejudice to paragraph 2, where a** court of **a** (…) Member State **is seised** to rule on an application for divorce, **legal (…)** separation or marriage annulment under Regulation (EC) No 2201/2003, **the courts of that State** shall (…) have jurisdiction (…) to rule on matters of the matrimonial property regime arising in connection with **that** application.

2. **Jurisdiction in matters of matrimonial property regimes under paragraph 1 shall be subject to the spouses' agreement where the court that is seised to rule on the application for divorce, legal separation or marriage annulment:**

   (a) **is the court of a Member State in which the applicant is habitually resident and he or she resided there for at least a year immediately before the application was made, in accordance with Article 3 (1) (a) fifth indent of Regulation (EC) n° 2201/2003, or**

   (b) **is the court of a Member State of which the applicant is a national and the applicant is habitually resident there and resided there for at least six months immediately before the application was made, in accordance with Article 3 (1) (a) sixth indent of Regulation (EC) n° 2201/2003, or**

   (c) **is seised under Article 5 of Regulation (EC) n° 2201/2003 in cases of conversion of legal separation into divorce, or**

   (d) **is seised under Article 7 of Regulation (EC) n° 2201/2003 in cases of residual jurisdiction.**

3. (…)If **the agreement referred to in paragraph 2** is concluded before the **court is seised to rule on matters of matrimonial property regimes, the agreement shall comply with Article 5a (2).**

(…)Article 4a

Article 5

Jurisdiction in other cases

(…) **Where no court of a Member State has jurisdiction according to** (…) Articles 3 and (…) 4 **or in cases other than those provided for in these Articles**, jurisdiction to rule on a matter of the spouses' matrimonial property regime shall lie with the courts of the Member State:

(a) **in whose territory** the spouses **are habitually resident** (…) **at the time the court is seised**, or failing that,

(b) **in whose territory the spouses were last habitually resident, insofar as** one of them still resides there **(…) at the time the court is seised**, or failing that,

(c) **in whose territory the respondent is habitually resident (…) at the time the court is seised**, or failing that,

(d) of the spouses' **common nationality at the time the court is seised** (…).

Article 5a

Choice of court

1. **In cases covered by Article 5, the parties** may (…) agree that the courts of the Member State whose law **is (…)** applicable in accordance with Article**s** 16**, 20 a (1) (a) or (b) or the courts of the Member State of the celebration of the marriage** shall (…) have **exclusive** jurisdiction to rule on matters of their matrimonial property regime.

2. **The agreement** (…) **shall be expressed** in writing and dated and signed by **the parties. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing**.

Article **5b**

Jurisdiction based on the appearance of the defendant

1. **Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State whose law is applicable in accordance with Articles 16, 20 a (1) (a) or (b), and before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or in cases covered by Articles 3 or 4(1).**

2. **Before assuming jurisdiction under paragraph 1, the court shall ensure that the defendant is informed of his right to contest the jurisdiction and of the consequences of entering or not entering an appearance.**

Article 5b1

Alternative jurisdiction

1. **By way of exception, if a court of the Member State that has jurisdiction under Articles 3, 5, 5a or 5b holds that under its private international law the marriage in question is not recognised for the purposes of matrimonial property regime proceedings, it may decline jurisdiction. If the court decides to decline, it shall do so without undue delay.**

2. **Where a court having jurisdiction under Articles 3 or 5 declines jurisdiction and where the parties agree to confer jurisdiction to the courts of any other Member State in accordance with Article 5a, jurisdiction to rule on matrimonial property regime shall lie with the courts of that Member State.**

   In other cases, jurisdiction to rule on the matrimonial property regime shall lie with the courts of any other Member State under Articles 5, 5b or the courts of the Member State of the celebration of the marriage.

3. This Article shall not apply when the parties have obtained a divorce, legal separation or marriage annulment which is capable of recognition in the Member State of the forum.[18]

Article 6

Subsidiary jurisdiction

Where no court **of a Member State** has jurisdiction according to Articles 3, 4**,** 5**, 5a and 5b or when all the courts according to Article 5b1 have declined jurisdiction and no court has jurisdiction under Article 5b1 (2),** the courts of a Member State shall have jurisdiction in so far as **immovable** property(…) of one or both spouses are located in the territory of that Member State, but in that event the court seised shall have jurisdiction to rule only in respect of the **immovable** property (…) in question.

Article 7

Forum necessitatis

Where no court of a Member State has jurisdiction **pursuant to** (…) Articles 3, 4, 5, **5a, 5b and 6, or when all the courts according to Article 5b1 have declined jurisdiction and no court of a Member State has jurisdiction under Articles 5b1 (2) and 6**, the courts of a Member State may, **on an exceptional basis** (…), rule on a matrimonial property regime case if proceedings (…) cannot reasonably be brought or conducted **or would be impossible** in a third State **with which the case is closely connected.**

The case must have a sufficient connection with the Member State of the court seised.

18 Similar language ("capable of recognition") can be found in Brussels I (recast) Regulation, Article 33(1)(a) and (3), Article 34(1)(b) and recital 23.

Article 8

Counterclaims

The court **in which proceedings are pending** (…) pursuant to Articles 3, 4, 5, **5a, 5b, 5b1 (2),** 6 or 7 (…) shall also have jurisdiction to rule on a counterclaim if it falls within the scope of this Regulation.

Article 8a

Limitation of proceedings

1. Where the estate of the deceased whose succession falls under Regulation (EU) N° 650/2012 comprises assets located in a third State, the court seised to rule on the matrimonial property regime may, at the request of one of the parties, decide not to rule on one or more of such assets if it may be expected that its decision in respect of those assets will not be recognised and, where applicable, declared enforceable in that third State.

2. Paragraph 1 shall not affect the right of the parties to limit the scope of the proceedings under the law of the Member State of the court seised.

Article 9

Seising a court

For the purpose of this Chapter, a court shall be deemed to be seised:

(a) **at the time when** (…) the document instituting the proceedings or an equivalent document is lodged with the court, provided that the **applicant** (…) has not subsequently failed to take the steps he (…) was required to take to have service effected on the defendant, or

(b) **if** (…) the document has to be served before being lodged with the court, **at a time when** (…) it is **received** (…) by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he (…) was required to take to have the document lodged with the court**, or**

(c) if the proceedings are opened of the court's own motion, at the time when the decision to open the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.

Article 10

Examination as to jurisdiction

Where a court of a Member State is seised of a **matter of** matrimonial property regime (…) over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 11

Examination as to admissibility

1. Where a defendant habitually resident in a (…) State other than the Member State where the action was brought does not enter an appearance, the court **having** (…)jurisdiction **according to this Regulation** shall **stay** (…) the proceedings **so long as it is not (…)** shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in time to **arrange for his defence** (…)**,** or that all necessary steps have been taken to this end.

2. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters[19] shall apply **instead (…)** of paragraph 1 of this article if the document instituting the proceedings or an equivalent document had to be **transmitted** (…) from one Member State to another pursuant to that Regulation.

[19] OJ L 324, 10.12.2007, p. 79.

3. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Article 12

Lis pendens

1. Where proceedings involving the same cause of action and between the parties are brought before courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. In the cases referred to in paragraph 1**, upon request by a court seised of the dispute,** (…) any other court seised (…) shall **without delay** inform **the former court** of the date **when** it was seised.

3. If the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 13

Related actions

1. Where related actions are pending **in the (…)** courts of different Member States, any court other than the court first seised may stay its proceedings.

2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable **decisions (…)** resulting from separate proceedings.

Article 14

Provisional, including protective, measures

Application may be made to the courts of a Member State for such provisional, including protective, measures **as may be available under the law of that State (…)**, even **if** (…), under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

Chapter III

Applicable law

(…)

Article 15 a

Universal application (…)

The law **designated as applicable by this Regulation (…)** shall **be applied whether or not (…)** it is (…) the law of a Member State.

Article 15 ***aa***

Unity of the applicable law

The law applicable to a matrimonial property regime under Article**s** 16 **or 20*a*** shall apply to all **assets falling under that regime, regardless of their location**.

Article 16

Choice of the applicable law

1. The spouses or future spouses may **agree to designate, or to change, (…)** the law applicable to their matrimonial property regime, **provided that (…)** it is one of the following:

(…)

(b) the law of the State **where** (…) the spouses **or future spouses, or one of them, is habitually resident** at the time **the agreement** (…) is **concluded** (…), or

(c) the law of **a** State of **nationality of either spouse** (…) or future spouse (…) at the time **the agreement** (…) is **concluded** (…).

2. Unless the spouses agree otherwise, a change of the law applicable to the matrimonial property regime made during the marriage shall have prospective effect only.

3. Any retroactive change of the applicable law under paragraph 2 shall not adversely affect the rights of third parties deriving from that law.

Article 17

(...)

Article 18

(...)

Article 19

(…) Formal validity of the agreement on a choice of applicable law

1. The **agreement referred to in Article 16** (…) **shall** be (…) **expressed in writing,** dated and signed by both spouses**. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.**

(…)

2. **However, i**f the law of the Member State in which **both (…)** spouses have their habitual residence at the time **the agreement is concluded lays down (…)** additional formal requirements for **matrimonial property agreements** (…), (…) **those** requirements **shall apply (…)**.

3. If the spouses are habitually resident in different Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements for matrimonial property agreements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

4. If only one of the spouses is habitually resident in a Member State at the time the agreement is concluded and that State lays down additional formal requirements for matrimonial property agreements, those requirements shall apply.

Article 19 a

Consent and material validity

1. **The existence and validity of an agreement on choice of law or of any term thereof, shall be determined by the law which would govern it under Article 16 of this Regulation if the agreement or term were valid.**

2. **Nevertheless, a spouse, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence at the time the court is seized if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.**

Article 20

(…) Formal validity of a matrimonial property agreement

1. **The matrimonial property agreement shall be expressed in writing, dated and signed by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.**

2. **However, if the law of the Member State in which both spouses have their habitual residence at the time the agreement is concluded lays down additional formal requirements for matrimonial property agreements, those requirements shall apply.**

   If the spouses are habitually resident in different Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements for matrimonial property agreements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

If only one of the spouses is habitually resident in a Member State at the time the agreement is concluded and that State lays down additional formal requirements for matrimonial property agreements, those requirements shall apply.

3. However, if the law applicable to the matrimonial property regime imposes additional formal requirements, those requirements shall apply.

(…)

Article 20a

Applicable law in the absence of choice of the parties

1. **In the absence of** (…) a choice-of-law agreement **pursuant to Article 16**, the law applicable to the matrimonial property regime shall be **the law of the State**:

(a) (…) of the spouses' first common habitual residence after the **celebration of the** marriage or, failing that,

(b) (…) of the spouses' common nationality at the time of the **celebration of the** marriage or, failing that,

(c) (…) with which the spouses jointly have the closest **connection at the time of the celebration of the marriage**, taking into account all the circumstances (…).

2. (…) If the spouses have more than one common nationality **at the time of the celebration of the marriage, only points (a) and (c) of paragraph 1 shall apply**.

3. By way of exception and upon application by either spouse, the judicial authority having jurisdiction to rule on matters of the matrimonial property regime may decide that the law of a State other than the State whose law is applicable under paragraph 1(a) shall govern the matrimonial property regime if the applicant demonstrates that:

(a) the spouses had their last common habitual residence in that other State for a significantly longer period of time than in the State designated in paragraph 1(a); and

(b) both spouses had relied on the law of that other State in arranging or planning their property relations.

The law of that other State shall apply as from the celebration of the marriage, unless one spouse disagrees. In the latter case, the law of that other State shall have effect as from the establishment of the last common habitual residence in that other State.

The application of the law of the other State shall not adversely affect the rights of third parties deriving from the law applicable under paragraph 1(a).

Paragraph 3 shall not apply when the spouses have concluded a matrimonial property agreement before the establishment of their last common habitual residence in that other State.

Article 20 aa

Scope of the applicable law

The law applicable to the matrimonial property regime under this Regulation shall determine, inter alia

(a) the classification of property of either or both spouses into different categories during and after marriage,

(b) the transfer of property from one category to the other,

(c) the responsibility of one spouse for liabilities and debts of the other spouse,

(d) the powers, rights and obligations of either or both spouses with regard to property,

(e) the dissolution of the matrimonial property regime and the partition, distribution or liquidation of the property,

(f) the effects of the matrimonial property regime on a legal relationship between a spouse and third parties, and

(g) the material validity of a matrimonial property agreement.

Article 20 b

Effects in respect of third parties

1. **Notwithstanding Article 20aa (f), the law that governs the matrimonial property regime between the spouses may not be invoked by a spouse against a third party in a dispute between the third party and either or both of the spouses unless the third party knew or, in the exercise of due diligence, should have known of that law.**

2. **The third party is deemed to possess this knowledge, if**

   (a) the law that governs the matrimonial property regime is the law of

      (i) the State whose law is applicable to the transaction between a spouse and the third party,

      (ii) the State where the contracting spouse and the third party have their habitual residence, or,

      (iii) in cases involving immovable property, the State in which the property is situated,

   or

   (b) either spouse had complied with the applicable requirements for disclosure or registration of the matrimonial property regime specified by the law of:

      (i) the State whose law is applicable to the transaction between a spouse and the third party,

      (ii) the State where the contracting spouse and the third party have their habitual residence or

      (iii) in cases involving immovable property, the State in which the property is situated.

3. Where the law that governs the matrimonial property regime between the spouses cannot be invoked by a spouse against a third party by virtue of paragraph 1, the effects of the matrimonial property regime in respect of the third party will be governed:

(a) by the law of the State whose law is applicable to the transaction between a spouse and the third party; or

(b) in cases involving immovable property or registered assets or rights, by the law of the State in which the property is situated or in which the assets or rights are registered.

(…)

Article 20 c

Adaptation of the rights in rem

Where a person invokes a right *in rem* to which he is entitled under the law applicable to the matrimonial property regime and the law of the Member State in which the right is invoked does not know the right *in rem* in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right under the law of that State, taking into account the aims and the interests pursued by the specific right *in rem* and the effects attached to it.

Article 22

Overriding mandatory provisions

1. **Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.**

2. (…) **Overriding mandatory provisions are provisions the respect for** which is regarded as crucial by a Member State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the matrimonial property regime under this Regulation.

Article 23

Public policy

The application of a **provision** (…) of the law **of any State designated (…)** by this Regulation may be refused only if such application is manifestly incompatible with the public policy of the forum.

Article 24

Exclusion of renvoi

The application of the law of any State specified by this Regulation (…) means the **application of the** rules of (…) law in force in that State other than its rules of private international law.

Article 25

States with more than one legal system - territorial conflicts of laws

1. **Where the law specified by this Regulation is that of a State which comprises several territorial units each of which has its own rules of law in respect of matrimonial property regimes, the internal conflict of laws rules of that State shall determine the relevant territorial unit whose rules of law shall apply.**

2. **In the absence of such internal conflict of laws rules:**

   (a) **any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to provisions referring to the habitual residence of the spouses, be construed as referring to the law of the territorial unit in which the spouses have their habitual residence;**

   (b) **any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to provisions referring to the nationality of the spouses, be construed as referring to the law of the territorial unit with which the spouses have the closest connection;**

   (c) **any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to any other provisions referring to other elements as connecting factors, be construed as referring to the law of the territorial unit in which the relevant element is located.**

Article 25 a

States with more than one legal system - inter-personal conflicts of laws

In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons in respect of matrimonial property regimes, any reference to the law of such a State shall be construed as referring to the system of law or set of rules determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the spouses have the closest connection shall apply.

Article 25 b

Non-application of this Regulation to internal conflicts of laws

A Member State which comprises several territorial units each of which has its own rules of law in respect of matrimonial property regimes shall not be required to apply this Regulation to conflicts of laws arising between such units only.

Chapter IV

Recognition, enforceability and enforcement of decisions

(…)

Article 26

Recognition (…)

1. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedures **provided for in Articles 31b to 31o**, apply for the decision to be recognised.

3. If the outcome of the proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

Article 27

Grounds of non-recognition (…)

A decision shall not be recognised (…):

(a) **if** such recognition is manifestly contrary to public policy **(*ordre public*)** in the Member State **in which recognition is sought**;

(b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him (…) to arrange for his (…) defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him (…) to do so;

(c) it is irreconcilable with a decision given in **proceedings** between the same parties in the Member State **in which recognition is sought**;

(d) it is irreconcilable with an earlier decision given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State **in which recognition is sought**.

Article 27a

Fundamental rights

Article 27 shall be applied by the courts and other competent authorities of the Member States in observance of the fundamental rights and principles recognised in the Charter of Fundamental Rights of the European Union, in particular Article 21 thereof on the principle of non-discrimination.

Article 28

Prohibition of review of jurisdiction of the court of origin

1. The jurisdiction of the court of the Member State of origin may not be reviewed.

2. The public policy **(*ordre public*)** criterion referred to in Article **27(a)** shall not apply to the rules on jurisdiction set out in Articles 3 to 8.

Article 29

No review as to substance

Under no circumstances may a (…) decision **given in a Member State** be reviewed as to its substance.

Article 30

Staying of recognition proceedings

A court of a Member State in which recognition is sought of a decision given in another Member State may stay the proceedings if an ordinary appeal against the decision has been lodged **in the Member State of origin**.

(…)

Article 31

Enforceability (…)

Decisions given in a Member State **and** enforceable **in that State** shall be **enforceable** in **another** Member State(…) **when, on the application of any interested party, they have been declared enforceable there** in accordance with **the procedure provided for in** Articles **31 b to 31o**(…).

Article 31a

Determination of domicile

To determine whether, for the purposes of the procedure provided for in Articles 31b to 31o, a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State.

Article 31b

Jurisdiction of local courts

1. The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement communicated to the Commission in accordance with Article 37a.

2. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

Article 31c

Procedure

1. The application procedure shall be governed by the law of the Member State of enforcement.

2. The applicant shall not be required to have a postal address or an authorised representative in the Member State of enforcement.

3. The application shall be accompanied by the following documents:

(a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;

(b) the attestation issued by the court or competent authority of the Member State of origin using the form established in accordance with the advisory procedure referred to in Article 37b(2), without prejudice to Article 31d.

Article 31d

Non-production of the attestation

1. If the attestation referred to in point (b) of Article 31c(3) is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.

2. If the court or competent authority so requires, a translation or transliteration of the documents shall be produced. The translation shall be done by a person qualified to do translations in one of the Member States.

Article 31e

Declaration of enforceability

The decision shall be declared enforceable immediately on completion of the formalities in Article 31c without any review under Article 27. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 31f

Notice of the decision on the application for a declaration of enforceability

1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement.

2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party.

Article 31g

Appeal against the decision on the application for a declaration of enforceability

1. The decision on the application for a declaration of enforceability may be appealed by either party.

2. The appeal shall be lodged with the court communicated by the Member State concerned to the Commission in accordance with Article 37a.

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 11 shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.

5. An appeal against the declaration of enforceability shall be lodged within 30 days of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be 60 days and shall run from the date of service, either on him in person or at his residence. No extension may be granted on account of distance.

Article 31h

Procedure to contest the decision given on appeal

The decision given on the appeal may be contested only by the procedure communicated by the Member State concerned to the Commission in accordance with Article 37a.

Article 31i

Refusal or revocation of a declaration of enforceability

The court with which an appeal is lodged under Article 31g or Article 31h shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 27. It shall give its decision without delay.

Article 31j

Staying of proceedings

The court with which an appeal is lodged under Article 31g or Article 31h shall, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

Article 31k

Provisional, including protective, measures

1. **When a decision must be recognised in accordance with this Chapter, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State of enforcement without a declaration of enforceability under Article 31e being required.**

2. **The declaration of enforceability shall carry with it by operation of law the power to proceed to any protective measures.**

3. **During the time specified for an appeal pursuant to Article 31g(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.**

Article 31l

Partial enforceability

1. **Where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.**

2. **An applicant may request a declaration of enforceability limited to parts of a decision.**

Article 31m

Legal aid

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in any proceedings for a declaration of enforceability, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

Article 31n

No security, bond or deposit

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for recognition, enforceability or enforcement of a decision given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

Article 31o

No charge, duty or fee

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State of enforcement.

Chapter IV a

Authentic instruments and court settlements

(…)

Article 32

Acceptance of authentic instruments

(…)

1. **An authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (*ordre public*) in the Member State concerned.**

   A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form established in accordance with the advisory procedure referred to in Article 37b(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

2. **Any challenge relating to the authenticity of an authentic instrument shall be made before the courts of the Member State of origin and shall be decided upon under the law of that State. The authentic instrument challenged shall not produce any evidentiary effect in another Member State as long as the challenge is pending before the competent court.**

3. Any challenge relating to the legal acts or legal relationships recorded in an authentic instrument shall be made before the courts having jurisdiction under this Regulation and shall be decided upon under the law applicable pursuant to Chapter III. The authentic instrument challenged shall not produce any evidentiary effect in a Member State other than the Member State of origin as regards the matter being challenged as long as the challenge is pending before the competent court.

4. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question relating to the legal acts or legal relationships recorded in an authentic instrument in matters of matrimonial property regimes, that court shall have jurisdiction over that question.

Article 33

Enforceability of authentic instruments

1. An authentic instrument which is enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 31b to 31o.

2. For the purposes of point (b) of Article 31c(3), the authority which established the authentic instrument shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 37b(2).

3. The court with which an appeal is lodged under Article 31g or Article 31h shall refuse or revoke a declaration of enforceability only if enforcement of the authentic instrument is manifestly contrary to public policy (*ordre public*) in the Member State of enforcement.

Article 34

(…) Enforceability of court settlements

1. Court settlements which are enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 31b to 31o.

2. For the purposes of point (b) of Article 31c(3), the court which approved the settlement or before which it was concluded shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 37b(2).

3. The court with which an appeal is lodged under Article 31g or Article 31h shall refuse or revoke a declaration of enforceability only if enforcement of the court settlement is manifestly contrary to public policy (*ordre public*) in the Member State of enforcement.

(…)

Chapter VI

General and final provisions

Article 36 -0

Legalisation and other similar formalities

No legalisation or other similar formality shall be required in respect of documents issued in a Member State in the context of this Regulation.

Article 36

Relations with existing international conventions

1. This Regulation shall not affect the application of the bilateral or multilateral conventions to which one or more Member States are party at the time of adoption of this Regulation and which **concern matters** covered by this Regulation, without prejudice to the obligations of the Member States under Article 351 of the Treaty.

2. Notwithstanding paragraph 1, this Regulation shall, between Member States, take precedence over conventions which relate to subjects governed by this Regulation and to which the Member States are party.

3. This Regulation shall not preclude the application of the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden containing international private law provisions on marriage, adoption and guardianship, as revised in 2006, of the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden comprising private international law provisions on succession, wills and estate administration, as revised in June 2012, and of the Convention of 11 October 1977 between Denmark, Finland, Iceland, Norway and Sweden on the recognition and enforcement of judgements in civil matters, by the Member States which are parties thereto, in so far as they provide for simplified and more expeditious procedures for the recognition and enforcement of decisions in matters of matrimonial property regimes.

Article 37

Information made available to the public

The Member States shall, with a view to making the information available to the public within the framework of the European Judicial Network in civil and commercial matters, provide the Commission with a short summary of their national legislation and procedures relating to matrimonial property regimes, including information on the type of authority which has competence in matters of matrimonial property regimes and on the effects in respect of third parties referred to in Article 20b.

The Member States shall keep the information permanently updated.

Article 37a

Information on contact details and procedures

1. **By …[*], the Member States shall communicate to the Commission:**

   (a) **the courts or authorities with competence to deal with applications for a declaration of enforceability in accordance with Article 31b(1) and with appeals against decisions on such applications in accordance with Article 31g(2);**

   (b) **the procedures to contest the decision given on appeal referred to in Article 31h;**

   The Member States shall apprise the Commission of any subsequent changes to that information.

2. **The Commission shall publish the information communicated in accordance with paragraph 1 in the *Official Journal of the European Union*, with the exception of the addresses and other contact details of the courts and authorities referred to in point (a) of paragraph 1.**

3. **The Commission shall make all information communicated in accordance with paragraph 1 publicly available through any appropriate means, in particular through the European Judicial Network in civil and commercial matters.**

[*] OJ: please insert the date: 9 months before the date of application of this Regulation.

Article 37 aa

Establishment and subsequent amendment of the list containing the information referred to in Article 2(3)

1. The Commission shall, on the basis of the notifications by the Member States, establish the list of the other authorities and legal professionals referred to in Article 2(3).

2. The Member States shall notify the Commission of any subsequent changes to the information contained in that list. The Commission shall amend the list accordingly.

3. The Commission shall publish the list and any subsequent amendments in the *Official Journal of the European Union*.

4. The Commission shall make all information notified in accordance with paragraphs 1 and 2 publicly available through any other appropriate means, in particular through the European Judicial Network in civil and commercial matters.

Article 37-0

Establishment and subsequent amendment of the attestations and forms referred to in Articles 31c(3)(b), 32, 33 and 34

The Commission shall adopt implementing acts establishing and subsequently amending the attestations and forms referred to in Articles 31c(3)(b), 32, 33 and 34. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 37b(2).

Article 37b

Committee procedure

1. **The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.**

2. **Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.**

Article 38

Review clause

1. No later than **eight** years after the date of application..., (…) the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation (…). Where necessary, the report shall be accompanied by proposals to amend this Regulation.

1a. No later than five years after the date of application, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of Articles 5b1 and 27a of this Regulation. This report shall evaluate in particular the extent to which these articles have ensured access to justice.

2. To that end, Member States shall communicate to the Commission relevant information on the application of this Regulation by their courts**.**

Article 39

Transitional provisions

1. (…) This Regulation shall apply **only** to legal proceedings instituted, to authentic instruments **formally drawn up or registered** (…) **and to** court settlements **approved or** concluded (…) **on or** after the date of its application **subject to paragraphs 2 and 3.**

2. However, if the proceedings in the Member State of origin were instituted before the date of application of this Regulation, decisions given after that date shall be recognised and enforced in accordance with Chapter IV as long as the rules of jurisdiction applied comply with those set out in Chapter II.

3. Chapter III shall apply only to spouses who marry or who specify the law applicable to the matrimonial property regime after the date of application of this Regulation.

Article 40

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. This Regulation shall apply from …[20]**, except for Articles 37 and 37a which shall apply from …**[21]**, and Articles 37aa, 37-0 and 37b, which shall apply from…**[22]**.**

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at […]

For the Council

The President

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[20] Two years and a half after its entry into force.
[21] Nine months before the date of application
[22] The day following the date of entry into force of this Regulation.